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ABSTRACT

Published as a special project of Texas IMPACT and the Texas Conference of Churches, this booklet outlines legal aspects of the education of undocumented children, lists moral and practical reasons for educating them, provides reasons for changing the Texas law which prohibits use of state funds for education of children who are not legally admitted aliens, rather than leaving the matter to the Supreme Court to decide, and discusses strategies for action. After a discussion of specific legal aspects and the moral issues involved, the booklet lists practical reasons for educating undocumented children: (1) the desire to exclude the children frequently grows out of myths and stereotypes; (2) undocumented children are likely to be permanent residents and, eventually, citizens; (3) the state has the resources to educate the children and maintain the quality of schools; (4) undocumented workers pay taxes that are used for public schools; and (5) expenditures for educating the children now are less than the later social and economic costs of not doing so. Strategies for action are listed, including legislative advocacy, local community advocacy, and assistance to undocumented children to help them get needed education. A list of selections for further reading is included. (CM)

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Education of Undocumented Children

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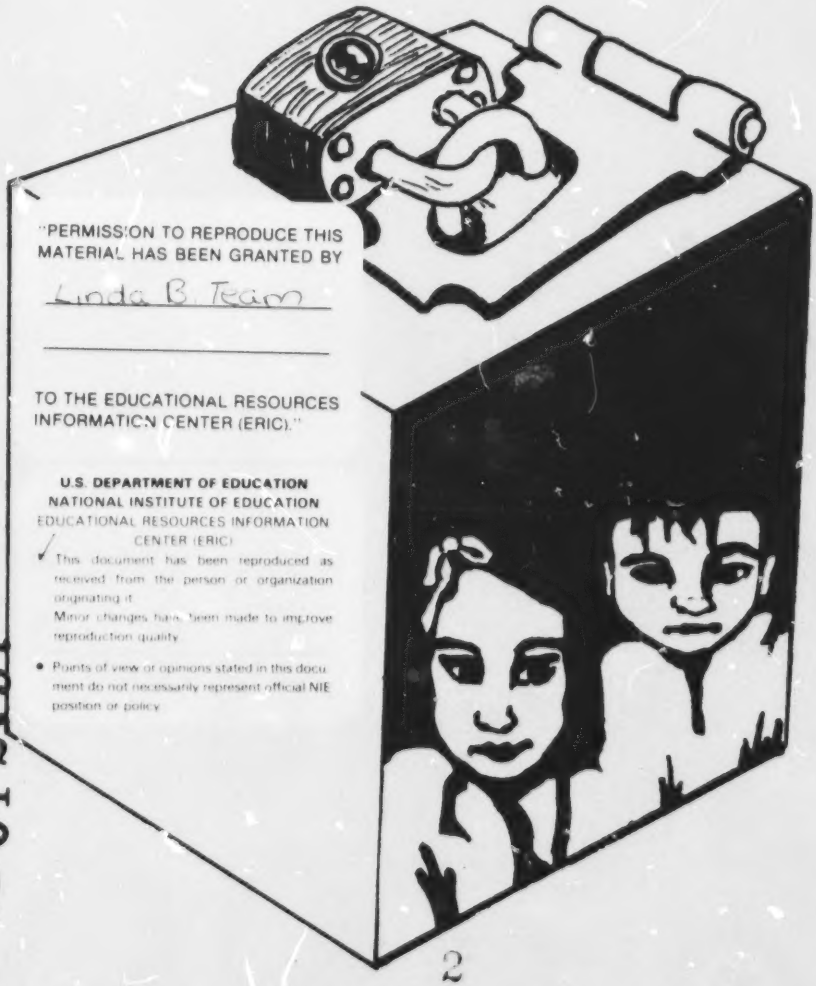

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POR LOS NIÑOS
Education of Undocumented Children

by
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November 1980

THE TEXAS CONFERENCE OF CHURCHES is an organization of the judicatories (geographical subdivisions) of Protestant, Roman Catholic and Greek Orthodox churches. In the Conference, members are witnessing jointly, striving for greater unity among Christians and "Doing together all things save those which (they) must in conscience and obedience do separately" (Constitution). Such ecumenism involves worship, study, communication, education, service, advocacy and action.

TEXAS IMPACT works closely with the Texas Conference of Churches and other religious groups in Texas to provide a presence of religious social concern in state government and to mobilize IMPACT members to influence public policy on behalf of all people.

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Introduction

The Texas Conference of Churches Assembly of Representatives voted in 1979 and 1980 to support "an open policy of public education benefits to all persons residing in the State of Texas, regardless of citizenship."

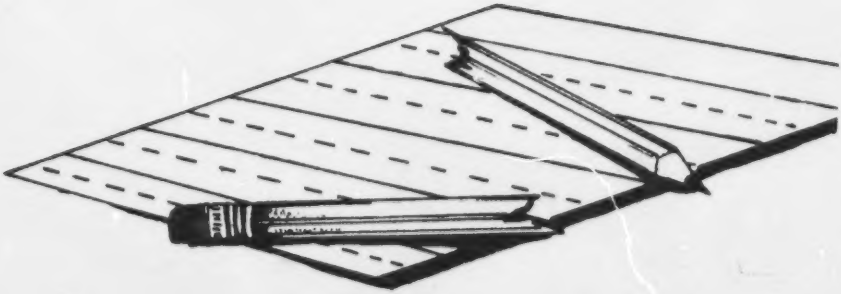
The Texas IMPACT Board of Directors has established the education of undocumented children as its first priority in the 67th Session of the Texas Legislature.

In presenting this booklet we are attempting to move beyond passing resolutions to a process of education on this vital issue. Though much has been reported in the news media during the recent litigation, it is difficult to get a complete picture of what is at stake.

We are not attempting here to deal with all of the complex issues of U.S-Mexico relations and immigration patterns that are currently undergoing re-examination at the national level. Rather, we will focus on the need to educate undocumented children.

We hope this booklet will be widely used in churches as a resource for study both by groups and individuals. Additionally, we hope it will lead the reader into further study and effective participation in the development of responsible immigration policies during this period of transition.

A note about terms: we will use the term "undocumented" for persons who lack the documents required for legal entry into the United States. Non-citizens who have the proper papers for residence will be referred to as "resident aliens" or "legal residents." This usage is consistent with recent language of the courts.



I. THE LAW

Texas is the only state in the United States with a law that prohibits the use of state funds for the education of children who are not legally admitted aliens.

The statue reads:

> Para. 21.031. Admission
>
> (a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.
>
> (b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.
>
> (c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having control resides within the school district.

Section 21.031 of the Texas Education Code was amended in May of 1975 to add the words "who are citizens of the United States or legally admitted aliens" in sub-sections (a) through (c). The amendment was sponsored by border legislators concerned about educating children from Mexico.

Senator Oscar Mauzy, chairman of the Senate Education Committee, has led efforts to return sub-section (a) — (c) to its original wording. Because of the lack of public support for the issue, the legislature has refused to do so.

The specific problem of Mexican children crossing the border to attend school was dealt with in 1977, when the code was amended to add sub-section (d), as follows:

> (d) In order for a person under the age of 18 years to establish a residence for the purpose of attending the public free school separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is not for the primary purpose of attending the public free schools. The board of trustees shall be responsible for determining whether an applicant for admission is a resident of the school district for purposes of attending the public schools.

Effects of the Law

Although the language of Section 21.031 (a) — (c) does not *prevent* school districts from admitting undocumented children, it has had that effect, because the use of state funds is denied for such children. Consequently, many children, some of whom had previously attended school in Texas or other states, have been excluded since 1975 from Texas public schools.

Institution of procedures to adhere to Section 21.031 was left in the hands of the individual school districts. Each school district could have its own policy on the type of documentation required.

Policies of local school districts varied widely. For example, the Houston Independent School District allowed payment of tuition, but the amount of tuition ($120 to $170 per month per child, depending on grade level) was prohibitive. Dallas, on the other hand, made no provision at all for tuition, barring the children totally. A few districts admitted all children without question. The study entitled "A Survey of Texas Independent School Districts as a Function of the Alienage Provisions of 21.031 of the Texas Education Code," by Esteban Flores of the University of Texas at Austin, found that, of the school districts surveyed with enrollments of 10,000 or more, 45.8% indicated that they did not allow the enrollment of undocumented children even with payment of tuition.

During the five years between May 1975 and July 1980, alternative schools were organized by church groups and other volunteers

in many Texas communities to educate the children. Although these efforts were commendable, they were limited in funding and resources. According to Gail Quintero, director of Instituto Mexicano Alternative School Houston, the adolescent children seemed to suffer most because they lacked the variety of resources available in the public junior and senior high schools.

Court Challenges

While volunteers attempted to fill the gap, the statute was being challenged in the courts. Late in 1975, the parents of undocumented children filed suit in a state district court against the Houston Independent School District for denying their children admission, on the basis that Section 21.031 of the Texas Education Code was unconstitutional. In this case, *Hernandez v. HISD*, the court ruled in favor of the Houston Independent School District and the Texas Education Agency, codefendents. The case was appealed to the Texas Supreme Court where the ruling of the lower court was upheld. Following the failure to win redress in state courts, advocates for the undocumented children turned to the federal courts.

The second major case was *Doe v. Plyler*, filed in September 1977 in the United States District Court for the Eastern District of Texas. In September 1978, Judge William Wayne Justice struck down the state and local district's exclusionary policy as it applied to the Tyler Independent School District and issued a permanent injunction forbidding the enforcement of the statute by the Tyler Independent School District. This case remains on appeal to the United States Fifth Circuit Court of Appeals.

In 1978, several suits were filed, four in the Southern District, one in the Northern District and two in the Eastern District, against the State of Texas and the Texas Education Agency. In November of 1979, the Judicial Panel on Multi-district Litigation ordered the consolidation of these suits into one case, *In Re Alien Children Education*, and assigned it to the Southern District Court for ruling on the constitutionality of the statute.

The case was heard by Judge Woodrow Seals from February 19, 1980 to March 27, 1980, in Houston, Texas. Among the arguments presented by the plaintiffs were:

1. Undocumented children are entitled to due process and equal protection under the Fourteenth Amendment.
2. Undocumented immigrants within the U.S. territorial jurisdiction are protected by civil rights statute.
3. Undocumented children are targeted for exclusion for reasons that are beyond their control, i.e., the children are at the mercy of their parent's actions.
4. The State can not prove that the State of Texas will suffer as a result of educating the children.

Judge Seals' Ruling

On July 21, 1980, Judge Seals ruled that Section 21.031 (a) — (c) of the Texas Education Code violated the equal protection clause of the Fourteenth Amendment of the United States Constitution. (The Fourteenth Amendment states in part: "No state shall . . . deny to any *person* within its jurisdiction the equal protection of the laws." (Italics ours.) What this means is that if the state does not protect such rights as those afforded by the Bill of Rights, then it becomes the responsibility of the federal government to intervene to assure that fundamental rights are not violated.

In his Opinion, Judge Seals considered ". . . whether education is so closely connected with guaranteed rights that total deprivation of education should be closely scrutinized." Judge Seals concluded that the right to free speech is a fundamental right guaranteed to all persons within U.S. jurisdiction and that education is so related to freedom of speech, that its denial is a violation of a fundamental right. In addition, Judge Seals highlighted the following points in his Opinion:

1. There is evidence to support the likelihood that these children are here to stay and will eventually become permanent residents of this country.
2. The children are innocent. These children are here because of their parents' actions and thus are not responsible for their immigration status.
3. The children and the society suffer great harm if the children are left uneducated. (Education is viewed as the mechanism for assimilation into this society.)

4. Undocumented immigrants in this country enjoy a form of *de facto* amnesty by virtue of the fact that the federal government is ineffective in regulating immigration.
5. The fiscal condition of the State of Texas is healthy.

Appeals, Injunctions and Stays

Judge Seals issued an injunction prohibiting the "Commissioner of Education, his employees, . . . from denying the benefits of the Available School Fund to any children . . . on account of their status under the United States immigration law," and from refusing to admit these children free of tuition on account of their immigration status.

The State of Texas appealed Judge Seals' ruling to the Fifth Circuit Court of Appeals on July 31, 1980. Attorney General Mark White also requested a stay of the injunction to admit undocumented children in the fall of 1980, arguing that educating the children would be costly during the time the case is being decided. The plaintiffs argued that the children's educational needs are crucial now.

On August 12, 1980, the Fifth Circuit Court of Appeals, without reviewing the trial record and without hearing oral argument, issued a one-sentence order staying the lower court's injunction.

Reaction to the stay was devastating. Children had already registered in many school districts and now, they would be turned away. In Houston, six hundred children had registered. HISD Superintendent Billy Reagan said that the children would be admitted if they provided any of fourteen documents, ranging from and alien registration card to an application for immigrant visa, as proof of intent to become a permanent resident. If they could not, they would be put "on hold" until the matter was resolved.

On another front, the alternative schools that had disbanded following Judge Seals' order rushed to seek funds and reorganize their programs for the fall session.

The attorneys for the plaintiffs proceeded to appeal the stay, arguing that "the stay will cause severe and irreparable educational, psychological and social damage to the children."

On September 4, 1980, U.S. Supreme Court Justice Lewis Powell ordered that the stay entered by the Fifth Circuit Court be vacated, requiring that the undocumented children be admitted into the schools immediately.

Justice Powell also stated, "If the district can demonstrate that, because of the number of undocumented alien children within its jurisdiction or because of exceptionally limited resources, the operation of the injunction would severely hamper the provision of education to all its students during the coming year, the granting of the stay would be justified."

Present Status

The State of Texas decided not to appeal Justice Powell's decision and the children started enrolling in some districts on September 5, 1980.

At the time of this writing the number of children enrolling is far below the estimates made by school officials. Texas Education Commissioner Alton Bowen has instructed the districts to keep account of the number of undocumented children enrolled in case the state applies for federal funding assistance.

According to Attorney General White, a decision is expected within six months (by March 1981) from the Fifth Circuit Court. Whatever the Fifth Circuit Court decides, the case is almost certain to go to the Supreme Court of the United States. It is likely to take as long as two years for the final decision.

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II. REASONS FOR EDUCATING THE CHILDREN

Moral Reasons

As organizations representing various religious faiths the Texas Conference of Churches and Texas IMPACT approach questions first from the perspective of our biblical understandings. The Judeo-Christian scriptural record has a recurring theme of insistence that the people of God have a special responsibility to the sojourners in their midst:

> Exodus 23:9: Do not mistreat a foreigner; you know how it feels to be a foreigner because you were foreigners in Egypt.
>
> Leviticus 19:34: The stranger who sojourns with you shall be as the native among you and you shall love him as yourself.
>
> Jeremiah 22:3: "I, the Lord, command you to do what is just and right. Protect the person who is being cheated from the one who is cheating him. Do no mistreat or oppress aliens, orphans or widows."
>
> Zechariah 7:8-10: The Lord gave this message to Zechariah: "Long ago I gave these commands to my people: 'You must see that justice is done, and must show kindness and mercy to one another. Do not oppress widows, orphans, foreigners who live among you, or anyone else in need." (T. E. V.)

The New Testament continues the theme of justice which is concerned for the poor and the stranger. In his first sermon, Jesus announced his ministry in the words of Isaiah 61:1-2:

> The Spirit of the Lord is upon me,
> Because he anointed me to preach good news to the poor.
> He has sent me to proclaim release to the captives
> And recovering of sight to the blind,
> To set at liberty those who are oppressed,
> To proclaim the acceptable year of the Lord.
>
> (Luke 4:18-19, RSV)

To deprive children of education is to make them captives of poverty and hopelessness.

Religious beliefs and moral values are the basis on which TCC and Texas IMPACT have adopted positions favoring the education of undocumented children. However, moral arguments do not have the absolute weight of fact; nor do they persuade those whose moral values may lead them to other conclusions.

Therefore, the following section will deal with logic and argue that there are compelling practical reasons to admit undocumented children to a free public education.

The reasons that will be described here for educating the undocumented children are:

1. The desire to exclude the children frequently grows out of myths and stereotypes.
2. The undocumented children are very likely to be permanent residents and, eventually, citizens of the U.S.
3. The State has the resources to educate the children and maintain the quality of the schools.
4. Undocumented workers pay taxes that are used for public schools.
5. The expenditures for educating the children now are less than the later social and economic costs of not doing so.

Practical Reasons

Reason 1. The desire to exclude the children frequently grows out of myths and stereotypes.

Undocumented people are the subject of many myths. According to Webster's dictionary, a myth is "an ill-founded belief held uncritically, especially by an interested group."

In the case of undocumented immigrants, especially Mexicans, we find that these myths grow out of prejudice with deep roots in the history of Anglo-Hispanic relations on the American continent. From early colonial expansion period, England and Spain competed vigorously and often violently for territories in the New World. This rivalry was exported, along with deep cultural differences, to the colonies. Religious differences, painfully deepened by the Reformation and Counter-Reformation, contributed to the hostile separation of Anglo and Hispanic settlements. Added to all of this was the disdain of the English colonists toward the dark-skinned people (Mestizos) born of the Spanish practice of intermarriage with Indians.

Over the years, this clash of two widely divergent cultures was played out in Texas and the Southwest in a series of wars and perennial border controversies. The legacy of this history is a residue of suspicion, distrust and prejudice on both sides of the U.S.-Mexico border.

In this context it is not surprising, though it is painfully regretable, that today's "Anglo" Americans continue to hold as true a variety of myths about people of Mexican descent. Some of these myths will be examined here as they are operative in the thinking of many people in approaching the issue of Mexican immigrants in general and the education of undocumented children in particular.

Myth: *"We must withstand the 'wetback menace.'"*

In recent years there has been a great deal of media hyperbole describing Mexican immigration, both legal and illegal, in colorful and discriminatory terms. The "flood" or "tide" of "illegal aliens" is described as a threat to the American way of life. This has led some to fear that the Mexicans are going to "take over."

Even in the Mexican-American communities, some people complain that the undocumented are changing the make-up of the community. They fear that their hard-won gains of economic progress and social acceptance will be lost as the newer immigrants move in.

The irony of the "wetback menace" attitude is marked when compared with the attitude toward our other neighbor, Canada. Statistical data show that there are more Canadian than Mexican immigrants in this country: in the 1970 census, there were about 800,000 people of Canadian origin as opposed to 750,000 people from Mexico, even though Canada has only 40% of Mexico's population. Canadians entered the U.S. at a much higher rate than Mexicans in every decade through 1951-1960, and at almost the same rate in 1961-1970. Yet we do not hear of a "Canadian menace."

The Canadians blend in more easily than the Mexicans primarily because of appearance. Both groups retain their culture, national heritage and identity, mainly because they are only a bus ride away from home and many intend to return to their homeland eventually. (Studies of return rates for these groups are not precise, but are estimated to be about the same, at one-third of all immigrants.)

If the real concern were sheer numbers, displacement of American workers or economic competition, then the Canadians would be regarded as a greater threat than the Mexicans. But the threat comes more from the fear of people who are different because of their race, their culture, their religion, their language or their poverty.

Myth: *"They take good jobs from Americans."*

The undocumented immigrants come to the U.S. because jobs are available; otherwise, they would not come. They choose sites where jobs are plentiful and where employers are receptive to them. Employers who have hired undocumented immigrants widely report that they are good workers, which is why they are hired.

Articles in many business publications, including the *Wall Street Journal*, have claimed that many American businesses (especially hotels, restaurants and others which require numbers of unskilled workers) could not function without undocumented workers. They are largely viewed by the business community as a necessary part of our economy.

At this time, there is no federal or state law (with the exception of California, where minimal effort has been made to enforce the law) to prohibit hiring of an undocumented worker. In Texas, lobbyists have fought penalizing employers for hiring undocumented persons.

Cases of exploitation of undocumented workers have occurred in which employers take advantage by paying the undocumented workers low wages, or in some cases not even paying them at all, with the threat that if they protest they will be deported. But these occurrences are not believed to be wide-spread. Roger Conner, executive director of the Federation for American Immigration Reform (FAIR) has stated:

> To the extent that illegal immigrants work more cheaply, harder and with fewer protections than American workers, they are being exploited; and to the extent that they take good jobs at good pay with the protection of the law, they are competing illegitimately and unfairly for the jobs Americans want and need.

The evidence indicates that undocumented workers get about the same wages per hour as legal workers in the same jobs. They may work harder, as many employers will attest, but this is understandable when one considers that the majority of undocumented workers are young, healthy, energetic and highly motivated. Also, they do not take "good jobs at good pay" as Roger Conner suggests. INS-213 forms (deportation suspect forms) that have been reviewed seldom show anyone making over $3.50 per hour. Other studies have shown similar findings. Seldom are undocumented workers found in white collar work. The conclusion is that for the jobs they take, which are usually in agriculture and services, i.e.,

restaurant work and domestic work, undocumented workers are paid at the same level as other workers.

The most important point to make regarding this myth is that in most cases, Americans do not want the jobs that the undocumented workers take. A study by the Immigration and Naturalization Service in San Diego, California, showed that U.S. citizens could not be found to fill the jobs from which undocumented workers were removed.

Myth: *"If we educate the undocumented children, it will condone illegality."*

This myth suggests that if we provide education, we will motivate families to come to the United States; since their entry is illegal, will thereby condone illegality.

The evidence demonstrates that undocumented immigrants do not come here to utilize public services. They come to find work; they go to where the jobs are. Hiring undocumented workers is not seriously discouraged because the necessary role they play in the economy is recognized. Yet, employing undocumented workers is not often referred to as "condoning illegality."

In examining this myth, it is helpful to look at "illegality" and how it relates to the undocumented person, and in particular, the undocumented child.

An illegal act is one that is contrary to the laws established by a governmental entity. Some laws have heavy moral implications, such as those concerning robbery and murder. Other laws, such as traffic laws, are intended to establish order and protect people. These do not entail grave moral principles. The amount of guilt and mental anguish which results from breaking a moral law is naturally much greater than that which results from harmlessly violating a traffic law. For instance when a traffic light is stuck on red, one may cautiously proceed with a clear conscience, even though it is technically illegal to do so. Or a life-threatening emergency may make exceeding the speed limit morally justifiable.

Although an undocumented person may recognize his entry into the U.S. as illegal, it is doubtful that he views it as immoral. Indeed, for a desperate father trying to feed his family, crossing the border to find work may be as moral as speeding in a life-threatening emergency.

Furthermore, immigration laws have changed from year to year,

making illegal what was once legal. Up until 1965, the U.S.-Mexico border was completely "open" in the sense that there was no numerical limit on immigrants, the border itself having been defined and redefined for over a century before that. In 1955, an annual ceiling of 120,000 was placed on the number of immigrants from the Western Hemisphere, with no limits within that total on individual countries. In 1976, a new law set limits for immigrants from any single country at 20,000 per year.

For people who want to be reunited with their families or simply to work in order to survive, the changing technicalities of immigration regulations could hardly have the weight of moral law. (There is no evidence that undocumented people are necessarily disposed to additional illegal acts, nor that they are less law-abiding than any other group.)

As to the undocumented children, if the parents enter illegally, are the children "criminals"? Even the children of convicted murderers are not stigmatized by the law in so harsh a manner. In no situation should children be deprived of education because of their parents' status or legal standing.

In *Doe v. Plyer*, U.S. District Judge William W. Justice stated:

> While the undocumented minor plaintiffs are of course legally culpable and subject to deportation, they can hardly be held morally responsible for their presence here. Many of them were hardly more than infants when they arrived in the United States, nor did they participate in their parents' decision to emigrate; consequently they deserve no additional burdens or penalties.

In summary, educating the undocumented children does not provide incentives for their parents to come to the United States, nor does it condone the parent's behavior. To exclude the children from education is to unjustly punish them for their parents' acts.

Myth: *"Their parents do not pay taxes and therefore the children are not entitled to attend school."*

That this kind of statement has been widely made is a reflection of the general lack of understanding of both the economic role of undocumented people and the methods of school financing.

Undocumented workers contribute to the tax base the same as any other people. To quote from Judge Seals' Opinion:

It is worth noting at this point that undocumented aliens contri-

bute to government revenues to the same extent as others with similar income. Nearly all of the recent studies which discuss the contributions of undocumented aliens to local, state and federal tax bases strongly suggest that this group pays more into the tax structure than they take out through social services. Due largely to their clandestine existence and the fear of being apprehended, undocumented aliens are one of the least likely groups to apply for social services. The public school education in Texas is financed primarily through sales taxes and *ad valorem* property taxes. Undocumented aliens are unable to escape the payment of those taxes; they buy consumer goods and they indirectly contribute property tax through payment of rent.

More importantly, the criteria for admission to public schools are not based on the amount of taxes a given family pays. Indigent children are not denied education.

Reason 2. The undocumented children are very likely to be permanent residents, and, eventually, U.S. citizens.

A telling argument in the litigation of the Houston case was that the children are expected to remain in the United States. As long as their parents live in the United States, whether legally or illegally, the children will also.

Because of changes in immigration laws and patterns of movement back and forth across the border, many families have some members who are documented and others who are not. Immigration policies favor immediate families of U.S. citizens and permanent resident aliens, so it is likely that families of mixed status will become documentable.

Judge Seals noted this complex pattern in his Opinion:

For example, the court heard testimony from a young girl who entered the country when she was five months old. Although the girl's father is a United States citizen and the child's mother is a documented resident alien, the child has no documents. She is, of course, documentable. Nonetheless, due to her difficulty in receiving her Mexican birth certificate, she remained undocumented and was excluded from school. The young girl previously had attended school in New Jersey and Missouri. Her eight-year-old brother was born in the United States and attends school.

He went on to say:

> One fact remains free from serious dispute: the great majority of the undocumented children who have been or would be excluded from the public school pursuant to the State statute are or will become permanent residents of this country. By denying them access to education we insure that most of them will become wards of society.

Reason 3. The State has the resources to educate the children and maintain the quality of the schools.

During the court hearing of *In Re Alien Children Education*, the State contended that the admission of undocumented immigrant children in the schools would have an adverse effect on the quality of education provided. Underlying this contention were these assumptions:

1. There are a great number of undocumented children in Texas;
2. Educating undocumented children will stretch limited resources;
3. Educating undocumented children will negatively impact the quality of education.

The following is a discussion of each of these assumptions as they relate to the major premise that the children's presence will affect the school system negatively.

First, there is no way to determine how many undocumented immigrant children there are in Texas. During the Houston case, the State presented evidence from Mark Flolid, who conducted a study and concluded that there are 111,284 undocumented children in Texas. Flolid arrived at this estimate using a formula of (1) calculating the number of documented Hispanic school-age children by obtaining the number enrolled in public and private schools from Texas Education Agency files, including those who had dropped out; (2) obtaining the number of Hispanic children from the 1970 census; and (3) subtracting the number of documented Hispanic children enrolled in school from the census figure of all Hispanic children aged 5 to 17. The "residual" obtained was called the "potential undocumented Hispanic school-age population."

The validity of the Flolid study was challenged when it was

shown in testimony that using his method would produce "residuals" for all races (the Anglo residual would be 183,215 and the Black residual would be 55,969). Following his logic would lead to the conclusion that there are over 200,000 undocumented immigrant children in Texas who are not Hispanic! Judge Seals ruled that the Flolid study "does not represent an accurate estimate of undocumented children in Texas" and accepted the figure of 20,000 presented by Dr. Jorge Bustamente, a respected demographer of the Clegio de Mexico, as a more sound estimate.

The second assumption is that educating the children will stretch limited resources. Immediately following Judge Seals' ruling, the Texas Education Agency estimated it would cost from $100 to $200 million to enroll the undocumented children in public schools without charging tuition. In response to TEA's claim, State Comptroller Bob Bullock issued a statement estimating the cost at only $40 million, or 1.4% of the total state budget.

The difference between the two sets of figures resulted from different estimates on the number of undodumented children. The Texas Education Agency used an estimate based on the discredited Flolid Study mentioned above; the State Comptroller used the estimate determined more valid by Judge Seals.

The difference in estimated number of children and consequent cost estimates is not germane to whether the resources are available. Judge Seals noted in his Opinion that there was a surplus at the end of fiscal year 1979 in each of the funds from which education monies come. He said further:

> The current estimate by the Comptroller is that the General Revenue Fund will have a cash balance of $234.4 million at the end of the current biennium. This projected surplus is sufficient to finance completely the education of all undocumented children in Texas even if the State correctly estimated the number of undocumented school-age children.

Despite these findings, the State has abided by the 111,284 figure. School officials in Houston estimated that 7,000 to 13,000 undocumented children would enroll, but after Justice Powell's ruling, only 2,200 children had enrolled by late September.

The strain on resources can only be determined when the children are attending school. Some school districts will have more difficulties than others and these districts may need additional assistance. But even counsel for the State noted in its closing argument: "Texas can come up with the money. If we want to get the

legislature to fund certain projects, we will go down and get them to fund it. The State never said it didn't have the money in its budget."

The third assumption, that educating undocumented children will have a negative impact on the quality of education, is related to cost, which is demonstrably affordable, and to effects on bilingual programs. Judge Seals addressed the latter in his Opinion:

> The evidence indicates that at the present time there is a shortage of qualified bilingual teachers in some school districts, and that educating an additional number of children with limited English-speaking ability will further strain these resources. The court heard, however, a great deal of expert testimony describing methodologies and techniques available to offset the shortage of bilingual teachers. Classroom management techniques have been utilized in other states when adequate numbers of bilingual teachers have been unavailable.

The *Texas State Plan for Bilingual Education* recognizes using "bilingual paraprofessional aides" to assist and issuing special permits to teach in a needed field. Also, there are teaching techniques, such as team teaching, that can be used effectively.*

Another rather surprising fact regarding the impact of educating undocumented children was observed by Judge Seals in his Opinion:

> The current Commissioner of the Texas Education Agency was the Deputy Commissioner at the time Section 21.031 was enacted and he was then primarily responsible for its implementation. He testified that no one from the Texas Legislature contacted anyone at the Texas Education Agency prior to the amendment. No studies were conducted to determine the number of undocumented children throughout the state, or the fiscal impact of educating them . . .

There have been little efforts by TEA to monitor implementation of the law, and no studies have been made to measure the effects of the statute. This led Judge Seals to conclude: "Because this basic information has not been gathered . . . there is no data which show that the academic performance of students had improved since undocumented children were excluded."

*The questions and issues surrounding bilingual education strategies in general are a topic for discussion in another forum and should not be confused with the question of whether to educate undocumented children. It should also be noted that the largest single source of funds for bilingual education is the federal government.

Reason 4: Undocumented workers pay taxes that are used for public schools.

As quoted in the "myths" section under Reason 1, Judge Seals affirmed the fact that undocumented workers contribute as much to government revenues as others with similar incomes. The bulk of the state budget is derived from consumer taxes, primarily the sales tax. These taxes, paid by everyone who spends money within the state, are the primary source of funds for public education. Another source is *ad valorem* property taxes which are contributed to indirectly through payment of rent, as well as directly by the property owners.

The Texas State Comptroller said "illegal aliens have been paying sales tax, motor vehicle tax and gasoline tax just like Texas residents. Some may treat them as second class citizens, but they are first class taxpayers." (*El Paso Times*, July 24, 1980)

Reason 5. The expenditure of educating the children now are less than the later social and economic costs of not doing so.

Long-term economic considerations must take into account more than the immediate budget implications, on whatever basis they are projected. We agree with Bishop John Edward McCarthy, whose testimony is highlighted in Judge Seals' Opinion:

> We are keeping certain people poor, and what we are manufacturing now is a monumental social cost to our society ten and fifteen and twenty years from now . . . We are manufacturing ignorance; to be ignorant in society is to be nonproductive; to be nonproductive means for many instances to be forced into a state of crime . . . (W)hether it be right now in the cost of modest increases in tuition, in public school operating, or . . . in terms of social cost . . . fifteen years from now, we will pay the bill.

Judge Seals said that to deprive the children of education would be to create ". . . a permanent underclass of persons who will live their lives in this country without being able to participate in our society."

III. WHY NOT LEAVE IT TO THE SUPREME COURT?

There are some who argue that the question of whether to educate undocumented children is in the hands of the courts and should be answered there. But the Texas Conference of Churches and Texas IMPACT have chosen to work to change the law.

Some reasons for changing the law rather than leaving the matter to the courts to decide are:

1. If we as citizens in Texas decide to change the law, it is likely to be implemented with more enthusiasm than if the Supreme Court "makes" us do it. It is important to demonstrate our concern for the children by *choosing* to educate them.
2. The courts are primarily concerned with the issue of constitutionality. They will decide, on the basis of their interpretation of the Constitution, whether the children have a right to public education. But aside from the question of constitutional rights, there are moral questions which lie outside the purpose of the courts.
3. It is possible that the Supreme Court may rule that the state law is constitutional. No one can guarantee the outcome. For those who support educating the children it is risky and even irresponsible to rest on the assumption that the courts will rule in favor of the children.
4. Even if it were assured that the law would be found unconstitutional the case may take two years or more to settle. Meanwhile, the status of the children is in question. It is likely that some districts will resist the injunction and continue to exclude the children.
5. If the Texas law were changed early in the 1981 legislative session, it would save significant tax dollars in court costs and legal fees.

IV. STRATEGIES FOR ACTION

Legislative advocacy

In order to change the law, it must be made clear to legislators that there is a political constituency that favors educating undocumented children. Some ways to accomplish that are:

1. Contact state senators and representatives and tell them your views.
2. Participate in a coalition (several are developing across the state) or organize one in your area, to build a broad base of support for the issue.
3. Bring the issue before church groups and other organizations and enlist their support.
4. Let the Texas Education Agency and the Attorney General know that you support educating the children. (They do not enact legislation, but their opposition could affect the outcome.)

Local Community Advocacy

Whatever the law or the courts say, local school officials are the key to implementation. It is important to work on the school district level to see that policies and practices are developed that include undocumented children. Activities here include:

1. Talk to school board members, school administrators, principals and teachers about your views.
2. Participate in or organize a community coalition to support the issue before the school board.
3. Bring the issue before parent and teacher organizations for discussion and appropriate action.
4. Monitor the schools to see that proper procedures are followed.

Assistance to Undocumented Children

Because of the "on again-off again" nature of the courts decisions, injunctions and stays, there is much confusion about whether the children are entitled to register. This is an added burden to the fears and other problems faced by the families of undocu-

mented children. It is not enough to litigate and legislate; other actions are needed. Whether done individually or through an organization, these activities can help the children actually get the education they need:

1. *Information dissemination* — Use flyers, radio announcements, etc., to inform parents that their children are now entitled to attend school.
2. *Assistance with registration* — Organize volunteers to help in the registration process. Spanish interpreters may be needed, or advocates whose presence ensures that people are fairly treated.
3. *Personal needs* — Some children will need help in getting their necessary shots or obtaining school supplies and clothing.
4. *Special programs* — There are many federally funded educational programs to which the children are entitled, such as bilingual education, remedial reading, etc. It may be necessary for advocates to ensure that the schools provide the services required by law. (In some instances, the children are being segregated from other students, and this is not only undesirable but illegal.)
5. *Special assistance* — In areas which have organized alternative schools, it may be beneficial to maintain them for after-school tutoring and enrichment programs.
6. *Protection of privacy* — All information on school registration records is protected by both state and federal privacy laws. Parents of undocumented children need to know this so they will not fear being reported to the Immigration and Naturalization Service. But more importantly, school officials need to be reminded that if they violate these laws they will be subject to criminal prosecution and forfeiture of all federal funds.
7. *Legal services* — Many of the children are documentable but legal services are required to clarify or change legal status.

SELECTIONS FOR FURTHER READING

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